

§ 116B-78. Agreement to locate property.

(a) Repealed by Session Laws 2009-312, s. 2, effective October 1, 2009, and applicable to agreements entered into on or after that date.

(a1) Agreements Covered. – An agreement by an owner is covered by this section if its primary purpose is to locate, deliver, recover, or assist in the recovery of property that is distributable to the owner or presumed abandoned.

(a2) Void Agreements. – An agreement covered by this section is void and unenforceable if it was entered into during the period commencing on the date the property was distributable to the owner and extending to a time that is 24 months after the date the property is paid or delivered to the Treasurer. This subsection does not apply to an owner's agreement with an attorney to file a claim or special proceeding as to identified property or contest the Treasurer's denial of a claim or a clerk's denial of a petition.

(b) Criteria for Agreements. – An agreement covered by this section is enforceable only if it meets all of the following criteria:

- (1) Is in writing and clearly sets forth the nature of the property and the services to be rendered.
- (2) Is signed by the owner, with signature notarized.
- (3) Describes the property, which includes the type of property, the property ID held by the State Treasurer, and the name of the holder.
- (4) States that there may be other claims to the property that may reduce the share of the owner.
- (5) States the value of the property, to the extent known, before and after the fee or other compensation has been deducted.
- (6) States clearly the fees and costs for services. Total fees and costs shall be limited as follows:
 - a. For an agreement covered by this section other than one covered by G.S. 28A-22-11, total fees and costs shall not exceed one thousand dollars (\$1,000) or twenty percent (20%) of the value of the property recovered, whichever is less.
 - b. For an agreement subject to G.S. 28A-22-11 by an heir, unknown or known but unlocated, the primary purpose of which is to locate or recover, or assist in the recovery, of a share in a decedent's estate, or surplus funds in a special proceeding, total fees and costs shall not exceed twenty percent (20%) of the value of the property recovered.
- (7) Discloses that the property is being held by the North Carolina Department of State Treasurer's Unclaimed Property Program.

(c) Mineral Proceeds. – If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

(d) Means of Payment. – Any person who enters into an agreement covered by this section with an owner shall be allowed to receive cash property, but not tangible property or securities, on behalf of the owner but shall not be authorized to negotiate the check made payable to the owner. Tangible property shall be delivered to the owner by the Treasurer, and securities will be reregistered into the owner's name.

(e) Other Remedies. – This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than as provided in subsection (b) of this section.

(f) Registration. – Any person who enters into an agreement covered by this section with an owner shall register each calendar year with the Treasurer. The information to be required under this subsection shall include the person's name, address, telephone number, state of incorporation or residence, as applicable, and the person's social security or federal identification number. A registration fee of one hundred dollars (\$100.00) shall be paid to the Treasurer at the time of the filing of the registration information. Fees received under this subsection shall be credited to the General Fund.

(g) Unfair Trade Practice. – In addition to rendering an agreement void and unenforceable, a failure to comply with the provisions of this section constitutes an unfair or deceptive trade practice under G.S. 75-1.1. (1979, 2nd Sess., c. 1311, s. 1; 1989, c. 114, s. 6; 1999-460, s. 6; 2009-312, s. 2.)